IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 1363 of 1993

Ramakrishnan .. Appellant/ Defendant No.4
S/o. Krishnasamy

Versus

1. Mayilsamy
2. Karuppasamy ... Respondents 1 & 2/ Plaintiffs NO. 1 & 2

3. The State of Tamil Nadu
   rep. by the District Collector
   Coimbatore

4. The Deputy Director of Survey and
   Land Records
   Coimbatore

5. The Special Tahsildar
   Updating Registry Scheme
   Pollachi
   Coimbatore District

6. Rajamani
7. Sundararajan .. Respondents 3 to 7/ Defendants 1 to 3,5 and 6

Appeal under Section 100 CPC against the decree and judgment dated 30.1.92 made in A.S. No. 25 of 1991 on the file of Subordinate Judge, Udumalpet confirming the decree and judgment dated 29.11.1990 made in O.S. No. 590 of 1987 on the file of District Munsif Court, Pollachi.

WEB COPY

For Appellant : Mr. P. Srinivas

For Respondents : Mr. B. Ramamurthy for RR1 and 2

Mrs. R. Shanthi Rakkappan
Government Advocate (CS) RR3 to 5

https://hcservices.ecourts.gov.in/hcservices/

JUDGMENT

The fourth defendant in the suit is the appellant in this second appeal. The Plaintiffs/respondents 1 and 2 herein have filed O.S. No. 590 of 1987 before the District Munsif Court, Pollachi for declaration to declare their title over the suit property, permanent injunction to restrain the third defendant/5th respondent herein from changing or cancelling the Patta dated 23.12.1986 issued in their favour under UDR Scheme and permanent injunction restraining the fourth defendant/appellant herein, defendants 5 and 6/respondents 7 and 8 herein from interfering with the possession and enjoyment of the suit property. The suit was decreed as prayed for. The appeal filed by the appellant herein was also dismissed, hence the present second appeal.

2. For the sake of convenience, the parties shall be referred as they were arrayed before the trial court.

3. It is an admitted fact that the suit lands are inam lands to an extent of 8.70 acres comprised in Survey No. 478/1A1 and 478/2 situate in Sirukalandai Village, Pollachi Taluk, Negamam Sub Registration District, Tirupur.

4. The suit lands were originally in possession of Venkatakrishnama Naicker. After his demise, under Ex.A3, deed of partition dated 07.03.1953 entered into between Damodaran, Narasimhan and Alamelu Mangammal, sons and wife of Venkatakrishnama Naicker, they partitioned the property equally, later executed sale deeds Exs. A1 and A2, both dated 21.03.1973 in favour of Thirumurthy Gounder, father of the Plaintiff. Thus, it is averred that the Plaintiffs are in possession of the suit lands from the date of Exs. A1 and A2. The dispute arose when the third defendant, who is fifth respondent herein granted Patta, Ex.B1 under UDR Scheme to the Plaintiffs and the defendants 4 to 6 under the impression that the Plaintiffs were in possession of Eastern side and the defendants 4 to 6 are in possession of Western side, ignoring the fact that they are in possession of Northern and Southern side respectively. At the instance of the fourth defendant, the first defendant office issued Ex.B2 dated 16.02.1987 giving instructions to the third defendant to set right the mistakes. Ex.B3 is an order re-confirming the order passed under Ex.B1, hence, the above suit has been filed seeking the reliefs mentioned above.

5. Before the trial court, the Plaintiffs have marked Exs. A1 to A20 and the first plaintiff was examined as PW1, one Venkatachalam was examined as PW2. The contesting defendants 4 to 6 have marked Exs. B1 to B3 and examined the fourth defendant as DW1.

6. The trial court, after consideration of the oral and documentary evidence found that both sides not disputed the application of Inam Act, but the Plaintiffs alleged that Patta issued under the said Act was contrary to the possession of their respective lands, which were not noted by them till the re-survey was conducted; that the patta issued by the Inam Tahsildar is allowed to continue, the lands of the plaintiffs to an extent of 4

https://hcservices.ecourts.gov.in/hcservices/

acres would be deemed to have been in possession of defendants; that it is admitted fact that the plaintiffs have dug a well, developed coconut groves where the defendants are not claiming any right; that the plaintiffs document and defendants document shows that the plaintiffs predecessors were in possession of the suit lands for more than 100 years; that after re-survey, based on possession of the lands, sub-divided as 478/1A and 478/2A and given to the plaintiffs and defendants respectively and decreed the suit. The first Appellate Court also dismissed the appeal on the same lines on which the trial court decreed the suit.

7. This second appeal was admitted based on the following substantial Questions of Law:-

> "1. Is the suit claim maintainable and not barred by res judicata as provided in Section 43 and bar of jurisdiction prescribed in Section 46 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 as the proceedings under the Act was allowed to become final?
>
> 2. Whether the courts below erred in law in declaring that the Plaintiffs are entitled to the suit property contrary to the revenue records and when the plaintiffs have failed to establish their possession and enjoyment of the suit properties for over the statutory period and when the plaintiff has restricted his claim to a lesser extent?

8. The learned counsel appearing for the appellant submitted that in view of the fact that the defendants 1 to 3 in their proceedings, Exs. B1 to B3 decided the claim of the Plaintiffs finally, without challenging the said orders, filing the suit before the civil court is untenable in Law; that the Defendants 1 to 3, on physical verification have passed the orders, Exs. B1 to B3, which were not considered by the courts below; that the plaintiffs have failed to establish their possession in the suit property for over the statutory period and prayed for setting aside the decree and judgment of the courts below.

9. The learned counsel appearing for the Plaintiffs/ respondents 1 and 2 herein, who are the contesting respondents, submitted that the courts below have considered the oral and documentary evidence and found that the plaintiffs were in possession of the lands comprised in Survey No.478/1A1 and 478/2A to an extent of 8.70 acres (9.10 acres as per Patta) which are located on the Northern side of the road as well as properties of the defendants 4 to 6; that Exs. A1 to A3 support the case of the plaintiffs; that Exs. B1 to B3 were issued wrongly without physical verification of possession of the parties, which is not a conclusive proof, the Civil Court alone is competent to entertain the suit to decide the various issues and to declare the right as well as to grant injunction; that Section 43 and 46 of Act 30 of 1963 namely The Tamil Nadu Minor Inams (Abolition and conversion into Ryotwari)

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Act, 1963 is not at all a bar. In support of the above contentions, the learned counsel for the respondents 1 and 2 relied on the decision of a full bench of this Court reported in (Srinivasan and six others vs. Sri Madhyarjuneswaraswami, Pattavaithalai, Thiruchirapalli and 5 others) 1998 (2) Law Weekly 189 wherein in Para Nos. 14 and 15 it was held thus:-

> "....A careful analysis of the scheme underlying these Abolition laws would go to show that the vesting on abolition under everyone of these legislation is subject to the pre-existing rights of the occupants, except in respect of what are known as public or communal properties, meant for common use and the grant of patta has been always considered and held to be in recognition of their pre-existing rights. The provisions relating to abolition and vesting, of the properties do not have the effect of obliterating or destroying such pre-existing rights, if any, except in respect of public or communal properties and the rights which inhere are the basic and fundamental rights which entitle a person to preferentially get patta under these legislation, and the same could not be equated to the grant of patta by way of assignment under the Revenue Standing Orders or under rules of assignment outside the scope of the statutory enactment. Similarly, a meticulous analysis of the scheme underlying the provisions of the Act dealing with the nature of rights dealt with by the various authorities, the manner in which such authorities adjudicate such rights and the consequences of such adjudication, disclose that they do not mean and even intend to be a substitute or alternate mode of resolution of the ordinary civil right of a citizen or for that matter persons asserting competing claims, in their attempt to project a claim for patta. Consequently, in our view, the ration of the decisions of the Apex Court reported in AIR 1986 SC 794=98 L.W. 849 (supra), (1995) 4 SCC 156=1995-1-L.W.31 (supra) and (1998) 2 SCC 642 (supra) and that of a Division Bench of this Court in 1988-2-L.W.513 (supra) of a learned single Judge of this Court in 1992-1-L.W.207 (supra) would squarely apply and govern the case and consequently, it has to be necessarily held that the jurisdiction of the civil Courts cannot be held to have been completely ousted or barred at any rate in respect of adjudication of claims of title and questions or issues which are not obliged or required to be adjudicated for the purposes of enforcement of these laws which have, as their object and aim, to implement ryotwari settlement in the areas governed by them.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

15. Further, the mere fact that the orders passed or decisions rendered under these Acts were given finality for the purposes of those Acts or that the issues, which they are obliged or required to be decided, when so decided are ordained to bind the parties to the proceedings or their privies and successors-in-interest applying the principles of res judicata does not have the effect of ousting the jurisdiction of the Civil Court once and for all. It is by now well settled that even in cases where finality is accorded to the decision or order, there are certain well settled exceptions and proved the existence of such exceptional factors, the Civil Court is entitled to nullify any or all such decisions. Similarly, even in cases where the principles of res judicata exist in a given case or not cannot be denied to the Civil Court and from the mere fact of according finality to the orders or decisions rendered under the Act or the application of the principles of res judicata, a total or complete bar or ouster of the jurisdiction of the Civil Courts for all and any purpose cannot be automatically inferred or implied. Before a plea of res judicata can be given effect to, it must be sufficiently pleaded and established that the litigating parties must be the same, that the subject matter of the suit and the other proceedings are also identical, that the questions arising in the suit and the other proceedings were directly and substantially in issue and the same was finally decided and that too by an authority or court of competent jurisdiction."

10. This Court carefully considered the argument of the counsel for both sides and perused the material records. The suit property originally belonged to one Venkatakrishnama Naicker. His legal heirs namely his sons Damodaran, Natarajan and his wife Alamelu Mangammal entered into a partition Ex.A3 dated 07.03.1959. In and by the said document, the suit lands were allotted to Natarajan, Damodaran and Alamelu Mangammal and they executed sale deed, Exs. A1 and A2 dated 21.03.1973 in favour of Thirumoorthy Gounder, father of the Plaintiffs and ever since the date of Ex.A1 and A2 dated 21.03.1973, the plaintiffs father and thereafter the plaintiffs have been in exclusive possession and enjoyment of the suit properties. In so far as the location of the suit property is concerned, Ex.A13, partition deed dated 22.04.1970 entered into between the defendants 4 to 6 clearly disclose that the suit properties are in the Northern side of their property. For the first time, the third respondent, under UDR Scheme issued Patta to the Plaintiffs and defendants 4 to 6 erroneously mentioning that they are in possession of the Eastern and Western side respectively without verifying the actual possession. The evidence of DW1 also disclose that Ex.B1 was issued wrongly without notice to the plaintiffs and also without physical verification. The evidence

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

placed shows that the defendants 4 to 6 are in occupation of the lands on the southern side and the plaintiffs are in occupation of the lands on Northern side, hence, the orders passed under Exs. B1 to B3 are patently incorrect and therefore the findings made by the courts below to that effect are confirmed.

11. In the light of the above discussion, we now look into the questions of law raised by the appellant at the time of admission of this second appeal. In so far as the first substantial question of law is concerned, the powers of statutory authorities constituted under the Act are exercised in a summary manner and the claims of occupants are determined only incidentally and they cannot be equated with Civil Courts in respect of cases where they could do or the nature of relief that they could grant. The provisions relating to abolition and vesting of the property do not have the effect of obliterating or destroying such pre-existing rights. The manner in which authorities adjudicate such rights and the consequences of such adjudication disclose that they do not mean and even intend to be a substitute or alternate mode of resolution of the ordinary civil right of a citizen or for that matter persons asserting competing claims, in their attempt to project a claim for patta. The jurisdiction of the civil Courts cannot be held to have been completely ousted or barred at any rate in respect of adjudication of claims of title and questions or issues which are not obliged or required to be adjudicated for the purposes of enforcement of these laws which have, as their object and aim, to implement ryotwari settlement in the areas governed by them. It is well settled that even in cases where finality is accorded to any decision or order, there are certain well settled exceptions and proved the existence of such exceptional factors, the Civil Court is entitled to nullify any or all such decisions. Before a plea of res judicata can be given effect to, it must be sufficiently pleaded and established that the litigating parties must be the same, that the subject matter of the suit and the other proceedings are also identical, that the questions arising in the suit and the other proceedings were directly and substantially in issue and the same was finally decided and that too by an authority or court of competent jurisdiction.

12. In view of the above said discussion and following the judgment of the Full Bench of this Court mentioned supra, I hold that there is no bar for the trial Court to entertain the suit and accordingly, the first substantial question of Law is answered against the appellant.

13. The averred second substantial question of Law relates only to question of fact. The courts below concurrently found that the plaintiffs and their predecessors in title have established their possession and enjoyment of the suit property for over 100 years, which were not properly considered by the authorities while issuing Exs. B1 to B3 and Ex.A13, partition deed entered into between the defendants 4 to 6 also support the case of the plaintiffs, hence, the same is answered accordingly against the appellant.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

12. In the result, the judgment and decree passed by the courts below are confirmed. The second appeal is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rsh

To

1. The Subordinate Judge
   Udumalpet

2. The District Munsif
   Pollachi
   Coimbatore District

3. The Section Officer
   Vernacular Records Section
   High Court
   Madras - 600 104

1 cc to mr.P. Srinivas, Advocate, Sr. 51446
1 cc to Mr.B. Ramamoorthy, Advocate, Sr. 51240
1 cc to Government Pleader, Sr. 51210

S.A. No. 1363 of 1993

TM (CO)
kk 4/1

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/